



No. 9-325A 049

Date NOV 21 1979

Fee \$ 50.00

ICC Washington, D. C.

November 20, 1979

There is submitted herewith, for filing with the Commission pursuant to 49 CFR 1116.1 et seq. three original counterparts of a Conditional Sale Agreement and Agreement and Assignment, dated as of October 1, 1979, by and among FMC Corporation, General Electric Company, Difco, Inc. and Burlington Northern Inc.

Enclosed is a check payable to the order of the Commission for \$50.00 in payment of the recordation.

The names and addresses of the parties to the above Conditional Sale Agreement and Agreement and Assignment and the respective capacities of said parties thereto are as follows:

Vendors - Manufacturers: FMC Corporation
4700 Northwest Front Avenue
P. O. Box 3616
Portland, Oregon 97208

General Electric Company
2901 East Lake Road
Erie, PA 16501

Difco, Inc.
1501 North Main Street
Findlay, Ohio 45850

Vendee: Burlington Northern Inc.
176 E. Fifth Street
St. Paul, Minnesota 55101

Agent - Assignee: The Chase Manhattan Bank
(National Association)
Land Transportation Division
One Chase Manhattan Plaza
New York, New York 10081

NOV 21 10 30 AM '79
FEE COLLECTION BR.
I.O.C.

RECORDATION NO. 11075
NOV 21 1979 - 10 45 AM
INTERSTATE COMMERCE COMMISSION

Office of the Secretary
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A general description of the equipment covered by the enclosed Conditional Sale Agreement and Assignment is as follows:

1,000 100-ton, 4,700 cu. ft. covered hopper cars,
Road Nos. BN 460200 to 461199, both inclusive

40 3,000 H.P. Model C-30-7 diesel-electric locomotives,
Road Nos. BN 5047 to 5086, both inclusive

10 Air dump cars, Road Nos. FWD 963122 to 963131,
both inclusive


Each unit of the above-described equipment will have marked on both sides thereof in letters not less than one inch in height:

"Unit Subject to Security Interest of the Agent
Bank Under Conditional Sale Agreement Recorded
With the I.C.C."

The locomotives and covered hopper cars will also be lettered "Burlington Northern Inc.", "BNI", or "BN", or in some other appropriate manner for the purpose of identification of the interest of Burlington Northern Inc. therein. The dump cars will also be lettered "Fort Worth and Denver Railway Company", "FWD" or in some other appropriate manner for the purpose of identification of the interest of Fort Worth and Denver Railway Company therein.

Please return to the individual presenting these documents for recordation, Ms. Carolyn H. Kunkel, one of the enclosed documents, stamped and bearing notation as provided in 49 CFR 1116.5.

Very truly yours,


John C. Smith
Associate General Counsel

JCS:bk

Enclosures

Interstate Commerce Commission
Washington, D.C. 20423

OFFICE OF THE SECRETARY

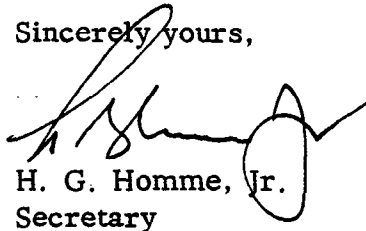
John C. Smith
Law Department
Burlington Northern
176 East Fifth Street
St. Paul Minnesota 55101

Dear Sir:

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C.

11303, on 11/21/79 at 10:45AM, and assigned recordation number(s). 11075.

Sincerely yours,



H. G. Homme, Jr.
Secretary

Enclosure(s)

RECORDATION NO. **11075** Filed 1425
NOV 21 1979 - 10 45 AM
INTERSTATE COMMERCE COMMISSION

CONDITIONAL SALE AGREEMENT

CONDITIONAL SALE AGREEMENT dated as of October 1, 1979 among FMC Corporation, a Delaware corporation (hereinafter called "FMC"), GENERAL ELECTRIC COMPANY, a New York corporation (hereinafter called "General Electric"), and DIFCO, INC. an Ohio corporation (hereinafter called "DIFCO"), (the foregoing companies being hereinafter collectively called the "Manufacturers", or severally, a "Manufacturer") and BURLINGTON NORTHERN INC., a Delaware corporation (hereinafter called the "Railroad").

WHEREAS, each Manufacturer is willing to construct, sell and deliver to the Railroad, and the Railroad is willing to purchase, the railroad equipment to be built by such Manufacturer as described in Schedules A, B and C attached hereto (collectively called the "Equipment" or "Items" and individually called the "Item of Equipment" or the "Item"); and

WHEREAS, except as otherwise provided in Section 3.1 hereof, each Manufacturer and the Railroad have agreed that this Agreement shall exclusively and completely state the rights of such Manufacturer and the Railroad with respect to the Equipment and shall supersede all other agreements, oral or written, with respect to the Equipment; and

WHEREAS, it is proposed that certain other companies enter into a Conditional Sale Agreement dated as of the date hereof (such Conditional Sale Agreement, when and if signed, being hereinafter called the "Other Agreement") with the Railroad covering railroad equipment as described in the Schedules attached thereto;

NOW, THEREFORE, in consideration of the mutual promises, covenants and agreements hereinafter set forth, the parties hereto agree as follows:

SECTION 1. CONSTRUCTION AND SALE.

Each Manufacturer will construct, sell and deliver to the Railroad, and the Railroad will purchase from such Manufacturer and accept delivery of and pay for as hereinafter provided, those Items of Equipment which are indicated on Schedules A, B and C attached hereto to be constructed and sold by such Manufacturer, each Item of which shall be constructed in accordance with the applicable specifications referred to in said Schedules A, B and C with such modifications thereof as may be agreed upon in writing by the Railroad and the Manufacturer thereof (which specifications and modifications, if any, are hereinafter called the "Specifications"). The design and quality of equipment and material used in the manufacture of such Items shall conform to all Department of Transportation and Interstate Commerce Commission requirements and specifications for new equipment in effect on the date such Items are delivered hereunder, and to all Rules of the Association of American Railroads, applicable to new railroad equipment of the character of such Items as of the date of this Agreement.

SECTION 2. DELIVERY.

2.1. Each Manufacturer will deliver the various Items of Equipment to be manufactured by it to the Railroad in accordance with the delivery schedule set forth in Schedules A, B and C attached hereto; provided, however, that the Manufacturers shall have no obligation to deliver any Item of Equipment hereunder if an Event of Default, or any event which with the lapse of time or the giving of notice, or both, would constitute an Event of Default, has occurred and is continuing.

2.2. Each Manufacturer's obligation as to time of delivery is subject, however, to delays resulting from causes beyond such Manufacturer's reasonable control, including, but not limited to, acts of God, acts of government such as embargoes, priorities and allocations, war or war conditions, riots or civil commotion, sabotage, strikes, differences with workmen, accidents, fire, flood, explosion, damage to plant, equipment or facilities, or delays in receiving necessary materials.

2.3 Notwithstanding the foregoing provisions, any Item of Equipment not delivered and accepted on or before

the outside delivery date provided therefor in Schedules A, B and C hereto, shall be excluded from this Agreement and not included in the term "Equipment" as used in this Agreement. In the event of any such exclusion the Manufacturer of such excluded Item of Equipment shall remain obligated to construct, sell and deliver to the Railroad, and the Railroad shall remain obligated to purchase from such Manufacturer, accept delivery of and pay for, any such Item of Equipment thus excluded from this Agreement, and the Railroad and such Manufacturer shall execute an agreement supplemental hereto limiting this Agreement to the Equipment not excluded herefrom, and such Manufacturer and the Railroad shall further execute a separate agreement providing for the sale of such excluded Equipment by such Manufacturer to the Railroad upon the same terms and conditions as those contained herein, modified only to the extent necessary to provide for payment in cash upon delivery of the Equipment, either directly or indirectly by means of a conditional sale agreement, equipment trust or other appropriate method of financing as the Railroad may determine and as may be reasonably satisfactory to such Manufacturer.

2.4. The Equipment during construction shall be subject to inspection by one or more inspectors or other authorized representatives of the Railroad. Upon completion of each Item of Equipment by the Manufacturer thereof, it shall be presented to such inspectors or representatives for inspection at the place designated herein for delivery of such Item of Equipment, and, if such Item of Equipment conforms to the Specifications applicable thereto, such inspectors or representatives shall execute and deliver to such Manufacturer a certificate or certificates of acceptance (hereinafter called the "Certificate of Acceptance") stating that such Item of Equipment has been inspected and is accepted by them on behalf of the Railroad and is marked in accordance with Section 5.1 hereof. Any Certificate of Acceptance may cover any number of Items of Equipment. Such Certificate of Acceptance shall be conclusive evidence that the Items of Equipment covered thereby have been delivered to the Railroad and conform to the Specifications and are acceptable to the Railroad in all details; provided, however, that the Manufacturer of such Items of Equipment shall not be relieved of its warranties.

2.5. The Manufacturer of each Item of Equipment shall bear the risk of loss of each Item of Equipment or damage thereto until delivery (at such place as specified in

such Manufacturer's Schedule attached hereto) to and acceptance by the Railroad. Upon such delivery to and acceptance by the Railroad of each such Item of Equipment the Railroad shall bear the risk of loss of or damage to such Item.

SECTION 3. PURCHASE PRICE AND PAYMENT.

3.1 The base price per Item of Equipment, including freight charges, if any, to place of destination, but exclusive of interest and all other charges, is as set forth in Schedules A, B and C attached hereto. The base price per Item of Equipment shall be subject to increase or decrease (a) as may have been agreed to by the Manufacturer thereof and the Railroad in accordance with agreements, if any, providing for price escalations heretofore entered into, which agreements shall remain in effect for the limited purpose of determining the price of the Equipment between the Railroad and the Manufacturer under this Section 3.1 or (b) as may be agreed to in writing by the Manufacturer thereof and the Railroad, and the term "Purchase Price" as used herein shall mean the base price as so increased or decreased.

3.2. For the purpose of making settlement for the Equipment, the Equipment hereunder and under the Other Agreement shall be divided into not more than 20 groups of Items of Equipment, or such other number as shall be agreed to by the parties hereto (each such group of Items being hereinafter called a "Group").

3.3. The Railroad hereby acknowledges itself to be indebted to the respective Manufacturers in the amount of, and hereby promises to pay to the respective Manufacturers at such bank or trust company in the United States as each of the Manufacturers or its assignee shall designate for payment to it in funds immediately available at such place of payment, the Purchase Price of the Equipment (hereinafter sometimes referred as to the "Conditional Sale Indebtedness") in installments as follows:

(a) On April 1, 1980 and on each April 1 and October 1 thereafter, an installment of interest accrued on the unpaid portion of the Conditional Sale Indebtedness from time to time outstanding until the same shall have become due and payable, at a rate per annum (i) from January 1, 1980 through September 30,

1983 equal to the Prime Rate (as defined below), (ii) from October 1, 1983 through September 30, 1986 equal to 103% of said Prime Rate and (iii) from October 1, 1986 through September 30, 1988 equal to 106% of said Prime Rate;

(b) On October 1, 1983 and on each October 1 thereafter to and including October 1, 1987, in addition to the installment of interest then payable, an installment equal to \$9,800,000; provided, however, that in no event shall an installment made under this subsection (b) be in excess of the entire principal balance remaining unpaid as of the date of such installment;

(c) On October 1, 1988, in addition to the installment of interest then payable, an installment equal to the entire principal balance, if any, remaining unpaid as of said date.

As used herein the term "Prime Rate" shall mean the prime commercial lending rate per annum announced by The Chase Manhattan Bank (National Association) at its principal office in New York City from time to time, each change in such announced rate to be effective for purposes of this Agreement on the day on which such change is effective.

3.4. The term "Closing Date" with respect to each Group shall mean such date not later than December 31, 1980 which is not more than twenty business days following presentation, by the Manufacturers of the Items of Equipment included in such Group, to the Railroad of the invoice, or invoices, and the Certificate or Certificates of Acceptance with respect to such Group, as shall be fixed by the Railroad by written or telegraphic notice delivered to such Manufacturer or Manufacturers and any assignee thereof at least five business days prior to the Closing Date designated therein.

3.5. The term "business days" as used herein means calendar days, excluding Saturdays, Sundays and holidays on which banks in the State of New York are authorized or required to close. If any date on which a payment is to be made hereunder is not a business day, the amount otherwise payable on such date shall be payable on the next succeeding business day, and no interest on such amount shall accrue for the period from and after the nominal date for payment thereof to such next succeeding business day.

3.6. Interest under this Agreement shall be determined on a basis of a year of 365 or 366 days, as the case may be, for the actual number of days (including the first day but excluding the last day) elapsed.

3.7. The Railroad will pay interest, payable on demand, on all unpaid balances of indebtedness, after the same shall have become due and payable pursuant to the terms hereof (whether at stated maturity, by acceleration or otherwise), at a rate per annum equal at all times to one percent per annum above (i) the Prime Rate from January 1, 1980 through September 30, 1983, (ii) 103% of the Prime Rate from October 1, 1983 through September 30, 1986 and (iii) 106% of the Prime Rate from October 1, 1986 through September 30, 1988 and thereafter, provided, however, that the parties hereto may specify a different interest rate to be applicable to any refinancing hereunder.

3.8. All payments provided for in this Agreement shall be made by the Railroad in such coin or currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts by 1 p.m. New York City time on the day any such payments are due.

3.9. The Railroad may, upon at least five business days' notice to the Manufacturers, prepay the Conditional Sale Indebtedness in whole or in part with accrued interest to the date of such prepayment on the amount prepaid, provided that each partial prepayment shall be in an amount (exclusive of interest) equal to \$100,000 or an integral multiple thereof and shall be applied to the installments in the inverse order of their maturities.

3.10. If this Agreement shall be assigned as contemplated by Section 14.4, the Railroad agrees to pay to the Agent a commitment fee at the rate of 1/2 of 1% per annum on the unused portion of the aggregate \$75,589,000 commitment arranged by the Agent to finance the purchase of the Equipment hereunder and under the Other Agreement, computed from November 15, 1979 to the later of the final Closing Date hereunder or the final Closing Date under the Other Agreement (hereinafter called the "Ultimate Closing Date"), payable April 1, 1980, October 1, 1980 and on the Ultimate Closing Date. The Railroad agrees to pay the Agent a commitment fee at the rate of 1/2 of 1% per annum upon the additional \$1,000,000 over and above said \$75,589,000 commitment computed from the date of the Railroad's notice

to the Agent that such additional amount shall be required to the Closing Date upon which such amount is drawn down and payable at such Closing Date.

SECTION 4. TITLE TO THE EQUIPMENT.

4.1. Each Manufacturer shall and hereby does retain the full legal title to and property in the Equipment built by it until the Railroad shall have made all of the payments hereunder and shall have kept and performed all its agreements herein contained, notwithstanding the delivery of the Equipment to and the possession and use thereof by the Railroad as herein provided. Any and all additions to the Equipment and any and all replacements of the Equipment and of parts thereof and additions thereto shall constitute accessions to the Equipment and shall be subject to all terms and conditions of this Agreement and included in the term "Equipment" as used in this Agreement.

4.2. When and only when the Manufacturers shall have been paid in full the aggregate amount of the Conditional Sale Indebtedness, together with interest thereon and all other payments as herein provided, and all the Railroad's other obligations herein contained shall have been performed, absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Railroad without further transfer or action on the part of the Manufacturers except that each Manufacturer, if requested by the Railroad so to do, will execute a bill or bills of sale of the Equipment transferring such Manufacturer's title thereto and property therein to the Railroad or upon its order free of all liens and encumbrances created or retained hereby and deliver such bill or bills of sale to the Railroad at its address specified in Section 21 hereof, and will execute in the same manner and deliver at the same place, for filing, registering, recording or depositing in all necessary public offices, such instrument or instruments in writing as may be necessary or appropriate in order then to make clear upon the public records the title of the Railroad to the Equipment, and will pay to the Railroad any money paid to such Manufacturer pursuant to Section 6 hereof and not theretofore applied as therein provided. The Railroad hereby waives and releases any and all rights, existing or that may be acquired, in or to the payment of any penalty, forfeit or damages for failure to execute and deliver such bill or bills of sale or to file any certificate of payment

in compliance with any law or statute requiring the filing of the same, except for failure to execute and deliver such bill or bills of sale or to file such certificate within a reasonable time after written demand by the Railroad.

SECTION 5. MARKING OF EQUIPMENT.

5.1. The Railroad will cause each Item of Equipment to be kept numbered with its road number as set forth in Schedules A, B and C hereto and will keep and maintain, plainly, distinctly, permanently and conspicuously marked by a plate or stencil printed in contrasting color upon both sides of each Item of Equipment in letters not less than one inch in height, the words "Unit Subject to Security Interest of the Agent Bank under Conditional Sale Agreement Recorded with the I.C.C.", with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect the title of the Manufacturer thereof to such Item of Equipment, its rights under this Agreement and the rights of any assignee under Section 14 hereof. The Railroad will not place any such Item of Equipment in operation or exercise any control or dominion over the same until the required legend shall have been so marked on both sides thereof and will replace promptly any such names and word or words which may be removed, defaced, obliterated or destroyed. The Railroad will not change the road number of any Item of Equipment except with the consent of the Manufacturer thereof and any assignee pursuant to Section 14 hereof and in accordance with a statement of new road numbers to be substituted therefor, which consent and statement previously shall have been filed, recorded or deposited in all public offices where this Agreement shall have been filed, recorded or deposited.

5.2. Except as above provided, the Railroad will not allow the name of any person, association or corporation to be placed on the Equipment as a designation that might be interpreted as a claim of ownership; provided, however, that the Railroad may cause the Equipment to be lettered with the names or initials or other insignia customarily used by the Railroad or its affiliates on railroad equipment used by it of the same or a similar type for convenience of identification of the right of the Railroad to use the Equipment under this Agreement.

SECTION 6. CASUALTY OCCURRENCES.

6.1. In the event that any Item of Equipment shall be or become lost, stolen, destroyed, or irreparably damaged, or shall be requisitioned or taken over by any governmental authority under the power of eminent domain or otherwise or rendered permanently unfit for use from any cause whatsoever (each such occurrence, except for any requisition which by its terms is indefinite or does not exceed the original term of this Agreement, being hereinafter called a "Casualty Occurrence"), prior to the payment of the indebtedness in respect of the Purchase Price of such Item, together with interest thereon and all other payments required hereby, the Railroad shall, within 30 days after a responsible officer of the Railroad shall have received notice that such Item of Equipment has suffered a Casualty Occurrence, but in no event later than 180 days after such Item of Equipment has suffered a Casualty Occurrence, fully inform the Manufacturers in regard thereto. Whenever from time to time the total Depreciated Value (as defined in Section 6.3) of Items of Equipment hereunder and under the Other Agreement which have suffered a Casualty Occurrence (exclusive of Items of Equipment having suffered a Casualty Occurrence with respect to which payments or replacements shall have been made to the Manufacturers pursuant to this Section 6 or Section 6 of the Other Agreement) shall exceed \$500,000 (or such lesser amount as the Railroad shall elect), the Railroad shall, within 30 days of such event, pay the Manufacturers and the Manufacturers under the Other Agreement a sum equal to the aggregate Depreciated Value, as of such date of payment, of such Items of Equipment under this Agreement and under the Other Agreement; provided, however, that if prior to the date such payment is required to be made the Railroad, at its election, shall have transferred, in accordance with Section 6.6, to the Manufacturers hereunder or under the Other Agreement, title to a replacement Item or Items of Equipment meeting the requirements of clause (iii) of Section 6.2, then, in such case, there shall be deducted from the amount of such payment an amount equal to the aggregate Depreciated Value, as of such date of payment, of all such replacement Items of Equipment. The Railroad shall file with the Manufacturers a certificate of a Vice President or the Comptroller or other Chief Accounting Officer of the Railroad setting forth the Depreciated Value, as of such date of payment, of each Item of Equipment suffering a Casualty Occurrence.

6.2. Any money paid to the Manufacturers pursuant to Section 6.1 hereof shall, so long as no Event of Default shall have occurred and be continuing, be applied, in whole or in part, as the Railroad shall direct in a written instrument filed with the Manufacturers, either (i) to prepay indebtedness in respect of the Purchase Price of the Equipment hereunder or under the Other Agreement, (ii) to or toward the cost of an Item or Items of Equipment of new standard gauge railroad equipment excluding passenger equipment to replace such Item of Equipment having suffered a Casualty Occurrence and which new Item or Items of Equipment shall be of a quality and have a value and utility at least equal to such Item of Equipment having suffered a Casualty Occurrence or (iii) to be released to the Railroad against transfer, in accordance with Section 6.6, to the Manufacturers of title to an Item or Items of used standard gauge railroad equipment which shall be free of all liens and charges except as permitted by Section 10 and shall be of the same character as the Equipment described in Schedules A, B and C hereto (or of such other character as may be acceptable to the Manufacturers) to replace such Item or Items of Equipment having suffered a Casualty Occurrence. In case any such money shall be applied to prepay indebtedness, it shall be so applied, on such date as the Railroad shall specify in such written direction, to prepay without penalty or premium, the unpaid balance of the principal installments of the Purchase Price of the Equipment hereunder and under the Other Agreement thereafter falling due in the inverse order of the maturity of such installments and ratably as between such installments due hereunder and under the Other Agreement. In case of replacement pursuant to clause (ii) of the first sentence of this Section 6.2, the amount to be paid by the Manufacturers in respect of any replacing Item shall not exceed the lesser of the cost of such Item or the amount which such Item would have cost if acquired on the earliest date when any of such money was paid to the Manufacturers, and the Railroad shall pay any additional cost of such Item. Under no circumstance shall Manufacturers be required under this Section 6.2 to make prepayments or to pay for replacements except out of funds paid to Manufacturers pursuant to Section 6.1 hereof. In the case of any replacement pursuant to clause (ii) of the first sentence of this Section 6.2, the Purchase Price of such replacing Item shall for the purpose of this Agreement be the amount of money advanced by the Manufacturers in payment therefor, but shall not include any portion of the cost thereof paid by the Railroad. The amount which any such replacing Item would have cost if

acquired on the earliest date when any of such money was paid to the Manufacturers shall be conclusively determined by the certificate of a Vice President or the Comptroller or other Chief Accounting Officer of the Railroad to be filed as hereinafter provided. In the case of each release of money to the Railroad pursuant to clause (iii) of the first sentence of this Section 6.2, the amount of money so released shall be equal to the Depreciated Value, as of the date such money was paid to the Manufacturers pursuant to Section 6.1, of the used replacement Item or Items transferred to the Manufacturers pursuant to said clause (iii), as the amount of such Depreciated Value shall be certified to by the Railroad in connection with such release as provided in Section 6.6.

6.3. The "Depreciated Value" as of any date of determination of any original or replacement Item of Equipment shall mean the purchase price paid for such Item when new depreciated to such date of determination on a straight line basis from the date such Item was originally delivered by the manufacturer thereof to a residual value of zero, computed at the rate of 6.667% of such purchase price per year pro rated on a daily basis. For the purpose of computing the Depreciated Value of any Item of Equipment which has suffered a Casualty Occurrence, such Depreciated Value shall be computed on a daily basis to the date of the occurrence of such Casualty Occurrence.

6.4. So long as no Event of Default shall have occurred and be continuing, any money paid to the Manufacturers pursuant to this Section 6 shall, if the Railroad shall in writing so direct, be invested, pending its application as hereinabove provided, in (i) such direct obligations of the United States of America or any agency or instrumentality thereof, or other obligations for which the faith of the United States is pledged to provide for the payment of principal and interest or (ii) commercial paper or finance company paper rated "A-1" or "P-1" or their equivalent by Standard & Poor's Corporation or a comparable national rating agency or (iii) obligations issued or guaranteed by any state of the United States or the District of Columbia or any political subdivision of any such state or district rated "AA" or better by a national rating service, or (iv) repurchase agreements fully secured by any one or more of the obligations referred to in clause (i) above, or (v) certificates of deposit issued by or bankers' acceptances drawn on and accepted by commercial banks in the United States of America which are members of the Federal

Reserve System having total assets aggregating at least \$200,000,000, in each case maturing in not more than one year from the date of such investment (all such investments being hereinafter called "Investments"), as may be specified in such written direction. Any such obligations shall from time to time be sold and the proceeds reinvested in such Investments as the Railroad may in writing direct. Any interest or earned discount received by the Manufacturers on any Investments shall be held by the Manufacturers and applied as herein provided. Upon any sale or the maturity of any Investments, the proceeds thereof, plus any interest received by the Manufacturers thereon, up to the cost (including accrued interest or earned discount) thereof, shall be held by the Manufacturers for application pursuant to this Section 6, and any excess shall be paid to the Railroad. If such proceeds (plus such interest or earned discount) shall be less than such cost, the Railroad will promptly pay to the Manufacturers an amount equal to such deficiency. The Railroad will pay all expenses incurred by the Manufacturers in connection with the purchase and sale of Investments.

6.5. The Railroad will cause any replacing Item to be plated or marked as provided in Section 5.1 hereof. Any and all such replacements of Equipment shall constitute accessions to the Equipment and shall be subject to all of the terms and conditions of this Agreement as though part of the original Equipment delivered hereunder and shall be included in the term "Equipment" as used in this Agreement. Title to all such replacements shall be free and clear of all liens and encumbrances and shall be taken initially and shall remain in the name of the Manufacturers subject to the provisions hereof, and the Railroad shall promptly execute, acknowledge, deliver, file and record all such documents (including the filing with the Interstate Commerce Commission in accordance with applicable law and the deposit with the Registrar General of Canada pursuant to Section 86 of the Railway Act of Canada and publication of notice of such deposit in The Canada Gazette in accordance with said Section 86 of an appropriate supplemental agreement describing such replacements) and do any and all such acts as may be necessary to cause such replacements to come under and be subject to this Agreement and to protect the title of the Manufacturers to such replacements. All such replacements shall be warranted in like manner as the Items replaced, and the vendor of the replacements shall if other than the Manufacturers, duly consent to the subjection thereof to this Agreement and agree to be bound by all the

terms and provisions contained herein in respect of such replacements in the like manner as the Manufacturers are in respect of the original Equipment delivered hereunder.

6.6. Whenever the Railroad shall file with the Manufacturers, pursuant to the foregoing provisions of this Section 6, a written direction to apply money to or toward the cost of a replacing Item of new standard gauge railroad equipment or to release money to the Railroad against transfer of title to the Manufacturers of a replacing Item of used standard gauge railroad equipment, or whenever the Railroad shall transfer title to the Manufacturers of such a replacing Item of used standard gauge railroad equipment pursuant to Section 6.1, the Railroad shall file with the Manufacturers in such number of counterparts as may reasonably be requested:

(a) a certificate of a Vice President or Chief Accounting Officer of the Railroad, authorized to make such a certification, certifying: (i) if such replacing Item is a new, unused Item, that such Item is new standard gauge railroad equipment (other than work or passenger equipment) and has been plated or marked as required by the provisions of this Section 6 and certifying the cost of such replacing Item, the amount which such replacing Item would have cost if acquired on the earliest date when any such money was paid to the Manufacturers and that the cost thereof does not exceed the fair value of such Item and that such replacing Item have a quality and value and utility at least equal to the Item or Items replaced; and (ii) if such replacing Item is a used Item, that such Item is used standard gauge railroad equipment (other than work or passenger equipment) and has been plated and marked as required by the provisions of this Section 6 and certifying the Depreciated Value of such Item, as of the earliest date any such money was paid to the Manufacturers, and that such replacing Item is of the character required by the terms of clause (iii) of the first sentence of Section 6.2;

(b) an opinion of counsel for the Railroad that title to each replacing Item is vested in the Manufacturers free and clear of all liens and encumbrances, and that such Item has come under and become subject to this Agreement and the security interest of the Agent hereunder;

(c) a bill of sale in favor of the Manufacturers or their assignee covering such replacement Item from, if a new Item, the manufacturer thereof or, if a used Item, the Railroad; and

(d) copies of financing statements filed in accordance with the Uniform Commercial Code where such replacing Item is not rolling stock.

6.7. In the event that any moneys paid to, or held by, the Manufacturers pursuant to this Section 6 are applied to the prepayment of indebtedness in respect of the Purchase Price, the Railroad will pay to the Manufacturers on the date of such application interest then accrued and unpaid on the indebtedness so prepaid.

If an Event of Default shall have occurred and be continuing, then so long as such Event of Default shall continue all money then held by the Manufacturers pursuant to this Section 6 shall be applied by the Manufacturers as if such money were money received upon the sale of Equipment pursuant to Section 16 hereof.

6.8. In order to facilitate the sale, or other disposition of any Equipment suffering a Casualty Occurrence, the Manufacturers shall upon request of the Railroad, provided the Railroad shall then be in compliance with the terms of this Section 6, execute and deliver to the Railroad or the Railroad's vendee, assignee or nominee, a bill of sale (without warranties) for such Equipment, and such other documents as may be required to release such Equipment from the terms and scope of this Conditional Sale Agreement, in such form as may be reasonably requested by the Railroad.

6.9. In the event that prior to the expiration of the term of this Agreement, the use of any Item of Equipment is requisitioned or taken by any governmental authority under the power of eminent domain or otherwise for an indefinite period or for a stated period ending on or before said date, the Railroad's duty to pay the indebtedness in respect of the Purchase Price thereof shall continue for the duration of such requisitioning or taking. The Railroad shall be entitled to receive and retain for its own account all sums payable for any such period by such governmental authority as compensation for requisition or taking of possession.

6.10. The Railroad represents and warrants that not more than \$3,000,000 in aggregate Purchase Price of Items of Equipment under this Agreement and under the Other Agreement constitutes Equipment which is not operable on railroad tracks; and the Railroad agrees that no purchase of new Equipment or replacement of used Equipment under this Section 6 or Section 6 of the Other Agreement will at any time result in a greater proportion of all Equipment hereunder and under the Other Agreement (computed on the basis of Depreciated Value as of such time) constituting Equipment not operable on railroad tracks than the ratio of \$3,000,000 to \$75,589,000.

SECTION 7. TAXES.

All payments to be made by the Railroad hereunder will be free of expense to the Manufacturers for collection or other charges and will be free of expense to the Manufacturers in respect of the amount of any local, state or federal taxes, license and registration fees, assessments, charges, fines, penalties, sales, use and property taxes, gross receipts taxes arising out of receipts from use or operation of the Equipment, and other taxes, fees and governmental charges similar or dissimilar to the foregoing (other than net income, excess profits and similar taxes) hereafter levied or imposed upon, or measured by, this Agreement or any sale, use, payment, shipment, delivery or transfer of title under the terms hereof, all of which expenses, taxes and licenses the Railroad assumes and agrees to pay on demand in addition to the other amounts payable by it pursuant to this Agreement. The Railroad will also pay promptly all taxes and assessments which may be imposed upon the Equipment or for the use or operation thereof by the Railroad or upon the earnings arising therefrom or upon the Manufacturers solely by reason of its ownership thereof and will keep at all times all and every part of the Equipment free and clear of all taxes and assessments which might in any way affect the title of the Manufacturers or result in a lien upon any Item of Equipment; provided, however, that the Railroad shall be under no obligation to pay any taxes, assessments, licenses, charges, fines or penalties of any kind so long as it is contesting in good faith and by appropriate legal proceedings such taxes, assessments, licenses, charges, fines or penalties and the nonpayment thereof does not, in the opinion of the Manufacturers, adversely affect the property or rights of the Manufacturers hereunder. If any such expenses, taxes, assessments,

licenses, charges, fines or penalties shall have been charged or levied against the Manufacturers directly and paid by the Manufacturers, the Railroad shall reimburse the Manufacturers on presentation of an invoice therefor; provided, however, that the Railroad shall not be obligated to reimburse the Manufacturers for any expenses, taxes, assessments, licenses, charges, fines or penalties so paid unless the Manufacturers shall have submitted notice in writing to the Railroad at least one business day in advance of payment thereof.

SECTION 8. REPORTS AND INSPECTIONS.

8.1. On or before April 1 in each year, commencing with the year 1981, the Railroad will furnish to the Manufacturers an accurate statement, as of the preceding December 31, (a) showing the amount, description and road numbers of the Items of Equipment then subject to this Agreement, the amount, description and road numbers of all Items of Equipment that may have suffered a Casualty Occurrence during the preceding 12 months (or since the date of this Agreement, in the case of the first such statement), and such other information regarding the condition or repair of the Equipment as the Manufacturers may reasonably request, and (b) stating that, in the case of all Equipment repaired or repainted during the period covered by such statement, the markings required by Section 5.1 hereof shall have been preserved or replaced.

8.2. In addition to the statements described in Section 8.1 above, the Railroad will furnish to the Manufacturers: (i) as soon as available and in any event within 120 days after the end of each fiscal year of the Railroad, a copy of the annual report for such year for the Railroad, containing financial statements for such year certified in a manner acceptable to the Manufacturers by independent public accountants acceptable to the Manufacturers; (ii) promptly after the sending or filing thereof, copies of all reports which the Railroad sends to any of its security holders, and copies of all reports and registration statements which the Railroad files with the Securities and Exchange Commission or any national securities exchange; (iii) as soon as possible and in any event within 30 days after a Casualty Occurrence, a statement showing the amount, description and road numbers of all Items of Equipment that suffered such Casualty Occurrence; and (iv) such other information respecting the

condition or operations, financial or otherwise, of the Railroad as the Manufacturers may from time to time reasonably request.

8.3. The Manufacturers shall have the right, at their sole cost and expense by their authorized representative, to inspect the Equipment and the Railroad's records with respect thereto, at such times as shall be reasonably necessary to confirm to the Manufacturers the existence and proper maintenance thereof during the continuance of this Agreement.

SECTION 9. POSSESSION, USE AND MAINTENANCE.

9.1. The Railroad, so long as no Event of Default has occurred and is continuing under this Agreement, shall have absolute right, from and after delivery of the Equipment by the Manufacturers to the Railroad, to the possession of the Equipment and the use thereof upon the railroad lines owned or operated by it either alone or jointly with another and whether under lease or otherwise, or upon the railroad lines owned or operated by any railroad company controlled by or controlling the Railroad, or over which it has trackage rights, and the Equipment may also be used upon connecting and other railroads in the usual interchange of traffic or leased to other railroads, from and after delivery of the Equipment by the Manufacturers to the Railroad; provided, however, that such use and lease shall be subject to all the terms and conditions of this Agreement and that the Railroad shall not assign or permit the assignment of any Item of Equipment to service involving the regular operation and maintenance thereof outside the continental United States. The Railroad agrees that it will not permit at any time more than 2% in aggregate Depreciated Value, as of such time, of the Items of Equipment hereunder and under the Other Agreement to be located in Mexico.

9.2. The Railroad shall use the Equipment only in the manner for which it was designed and intended and so as to subject it only to ordinary wear and tear. The Railroad shall, at its own cost and expense, maintain and keep the Equipment in good order, condition and repair, ordinary wear and tear excepted, suitable for use in interchange. The Railroad shall not modify any Item of Equipment without the written authority and approval of the Manufacturers which approval shall not be unreasonably withheld, provided that no such approval shall be necessary if and to the extent

such modification is required by Section 11 hereof. Any parts (except communications, signal and automatic control equipment and devices having a similar use which are added to any Item of Equipment by the Railroad, the cost of which is not included in the Purchase Price of such Item and which are not required for the operation or use of such Item by the Interstate Commerce Commission, the Department of Transportation or any other regulatory body) installed or replacements made by the Railroad upon any Item of Equipment shall be considered accessions to such Item of Equipment and title thereto shall be immediately vested in the Manufacturers, without cost or expense to the Manufacturers.

SECTION 10. PROHIBITION AGAINST LIENS.

10.1. The Railroad will pay or satisfy and discharge any and all sums claimed by any party by, through or under the Railroad or its successors or assigns which, if unpaid, might become a lien or a charge upon any Item of Equipment equal or superior to the security title of the Manufacturers, and any liens, encumbrances or charges which might be levied against or imposed upon any Item of Equipment as a result of the failure of the Railroad to perform or observe any of its covenants or agreements under this Agreement, but shall not be required to pay or discharge any such claim so long as the validity thereof shall be contested by the Railroad in good faith and by appropriate legal proceedings in any reasonable manner and the nonpayment thereof does not, in the opinion of the Manufacturers, adversely affect the property or rights of the Manufacturers hereunder.

10.2. The covenant of Section 10.1 will not be deemed breached by reason of liens for taxes, assessments or governmental charges or levies, in each case not due and delinquent, or undetermined or inchoate materialmen's or other liens arising in the ordinary course of business and mechanics', workmen's, repairmen's or other liens arising in the ordinary course of business and, in each case, not delinquent (such liens being herein called "permitted liens").

SECTION 11. COMPLIANCE WITH RULES, LAWS AND REGULATIONS.

During the term of this Agreement the Railroad will comply in all respects with all laws of the jurisdictions in

which its operations involving the Equipment may extend, with the Interchange Rules of the Association of American Railroads and with all rules of the United States Department of Transportation, the Interstate Commerce Commission, and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Equipment, to the extent that such laws and rules affect the operation or use of the Equipment; and in the event that such laws or rules require the alteration of the Equipment, the Railroad will conform therewith at its expense, and will maintain the same in proper condition for operation under such laws and rules; provided, however, that the Railroad may, in good faith, contest the validity or application of any such law or rule in any reasonable manner which does not, in the opinion of the Manufacturers, adversely affect the property or rights of the Manufacturers hereunder.

SECTION 12. INDEMNITIES.

12.1. The Railroad agrees to indemnify, protect and hold harmless the Manufacturers against all losses, damages, injuries, liabilities, claims and demands whatsoever, regardless of the cause thereof, and expenses in connection therewith, including claims for strict liability in tort and counsel fees, arising out of retention by the Manufacturers of security title to the Equipment, or out of the use and operation thereof during the period when security title thereto remains in the Manufacturers. This covenant of indemnity shall continue in full force and effect notwithstanding payment in full of the aggregate amount of the Conditional Sale Indebtedness, together with interest thereon, and all other payments as herein provided, and the conveyance of the Equipment, as provided in Section 4.2 hereof, or the termination or assignment of this Agreement in any manner whatsoever; provided, that any assignee under Section 14 hereof shall receive the full benefit of this Section 12.1 notwithstanding the retention by the Manufacturers of their rights hereunder.

12.2 The Railroad, after delivery to and acceptance by the Railroad pursuant to Section 2.5 hereof of each Item of Equipment, will bear the risk of, and shall not be released from its obligations hereunder in the event of, any damage to or the destruction or loss of such Item of Equipment.

12.3. The warranties of each Manufacturer with respect to defects in material or workmanship of the Items of Equipment to be built by such Manufacturer are set forth in Schedules A, B and C hereto.

SECTION 13. PATENT INDEMNITIES.

13.1. Except in cases of designs, systems, processes, formulae or combinations specified by the Railroad and not developed or purported to be developed by a Manufacturer, and articles and materials specified by the Railroad and not manufactured by a Manufacturer, each Manufacturer agrees to indemnify, protect and hold harmless the Railroad from and against any and all liability, claims, demands, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Railroad because of the use in or about the construction or operation of any Item of Equipment to be built by such Manufacturer, of any design, article or material which infringes or is claimed to infringe on or to constitute contributory infringement with respect to any patent or other right. The Railroad likewise will indemnify, protect and hold harmless each Manufacturer from and against any and all liability, claims, demands, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against such Manufacturer because of the use in or about the construction or operation of any Item of Equipment to be built by such Manufacturer, of any design, systems, processes, formulae and combinations specified by the Railroad and not developed or purported to be developed by the Manufacturer, or any article or material specified by the Railroad and not manufactured by the Manufacturer, which infringes or is claimed to infringe on or to constitute contributory infringement with respect to any patent or other right. In case any Item of Equipment is held to constitute infringement of any patent or any similar right in respect of which liability may be charged against a Manufacturer, and the use of any Item of Equipment to be built by such Manufacturer is enjoined, such Manufacturer shall, at its own expense and at its option, either procure for the Railroad the right to continue using such Item of Equipment or replace the same with noninfringing, or remove the infringing portion of such Item of Equipment and refund the purchase price and the transportation and installation costs of such portion but in each case without impairing the operational capability of such equipment. Without intending

any limitation of the foregoing, each Manufacturer agrees to and hereby does, to the extent legally possible without impairing any claim, right or cause of action hereinafter referred to, transfer, assign, set over and deliver to the Railroad every claim, right and cause of action which such Manufacturer has or hereafter shall have against the originator of any design or against the seller or sellers of any designs or articles or materials purchased or otherwise acquired by such Manufacturer for use in or about the construction or operation of the Items of Equipment to be built by such Manufacturer on the ground that any such design, article or material or operation thereof infringes or is claimed to infringe on or to constitute contributory infringement with respect to any patent or other right and each Manufacturer further agrees to execute and deliver to the Railroad all and every such further assurance as may be reasonably requested by the Railroad, more fully to effectuate the assignment, transfer and delivery of every such claim, right and cause of action. Each Manufacturer will give notice to the Railroad of any claim known to such Manufacturer from which liability may be charged against the Railroad hereunder and the Railroad will give notice to each Manufacturer of any claim known to it from which liability may be charged against such Manufacturer hereunder.

13.2. The patent indemnity set forth in Section 13.1 shall not be applicable to General Electric, and the following patent indemnity shall be applicable instead: Except in cases of designs specified by the Railroad and not developed or purported to be developed by General Electric, and articles and materials specified by the Railroad and not manufactured by General Electric, General Electric warrants for itself that Equipment furnished hereunder, and any part thereof, shall be delivered free of any rightful claim of any third party for infringement of any United States patent. If notified promptly in writing and given authority, information and assistance, General Electric shall defend, or may settle, at its expense, any suit or proceeding against the Railroad so far as based on a claimed infringement which would result in a breach of this warranty and General Electric shall pay all damages and costs awarded therein against the Railroad due to such breach. In case any Equipment or part thereof is in such suit or proceeding found to constitute such an infringement and the use of such Equipment or part thereof is enjoined, General Electric shall, at its expense and option, either procure for the Railroad the right to continue using said Equipment or part thereof, or replace same within six months of such

injunction with non-infringing Equipment or part thereof acceptable to the Railroad, or modify same so it becomes non-infringing, or remove the Equipment or part thereof and refund the Purchase Price (less reasonable depreciation for any period of use) and any transportation costs separately paid by the Railroad but in each case without impairing the operational capability of such Equipment. The preceding shall not apply to the use of any Equipment or part thereof furnished hereunder in conjunction with any other product in a combination not furnished by General Electric as a part of this transaction. As to any such combination, General Electric assumes no liability whatsoever for patent infringement and the Railroad will hold General Electric harmless against any infringement claims arising therefrom. General Electric will give notice to the Railroad of any claim known to General Electric from which liability may be charged against the Railroad hereunder and the Railroad will give notice to General Electric of any claim known to them from which liability may be charged against General Electric hereunder.

13.3 The term "design" wherever used in this Agreement or in any assignment of this Agreement shall be deemed to include formulae, systems, processes, and combinations.

SECTION 14. ASSIGNMENTS.

14.1 Except as otherwise provided in Section 9.1 hereof, the Railroad, to the extent that it may effectively do so under applicable law, covenants not to sell, assign, transfer or otherwise dispose of all or any of its rights under this Agreement or transfer the right to possession of any Item of Equipment without first obtaining the written consent of the Manufacturers. An assignment or transfer to a railroad company or other purchaser (including a successor corporation by consolidation or merger) which shall acquire all or substantially all the railroad lines of the Railroad, and which by execution of any appropriate instrument satisfactory to the Manufacturers shall assume and agree to perform each and all of the obligations and covenants of the Railroad hereunder, shall not be deemed a breach of this covenant. A lease of any or part of the Equipment to a subsidiary at least 80% directly or indirectly owned by the Railroad shall not be deemed to be a breach of this covenant, provided that the Railroad shall continue to be obligated under all the terms of this Agreement.

14.2. All or any of the rights, benefits and advantages of the Manufacturers under this Agreement, including the right to receive the payments herein provided to be made by the Railroad, may be assigned by the Manufacturers and reassigned by an assignee at any time or from time to time. No such assignment shall subject any assignee to, or relieve any Manufacturer from, any of the obligations of such Manufacturer to construct and deliver the Equipment in accordance with Sections 1 and 2.1 hereof, or to respond to its warranties and indemnities contained in Sections 12.3 (subject always to any DISCLAIMER OR IMPLIED WARRANTIES and limitation of remedies) and 13 hereof, or relieve the Railroad of its obligations to the Manufacturers hereunder or any other obligation which, according to its terms and context, is intended to survive an assignment.

14.3. Upon any such assignment, either the assignor or the assignee shall give written notice to the Railroad, together with a counterpart or copy of such assignment, stating the identity and post office address of the assignee, and such assignee shall, by virtue of such assignment, acquire all of the Manufacturers' right, security title and interest in and to the Equipment subject only to such reservations as may be contained in such assignment. From and after the receipt by the Railroad of the notification of any such assignment, all payments and notices thereafter to be made by the Railroad hereunder shall, to the extent so assigned, be made to the assignee at the address of the assignee specified in the aforesaid notice.

14.4. The Railroad hereby acknowledges that, concurrently with the execution and delivery of this Agreement and in accordance with the custom of railroad equipment manufacturers, the Railroad has made arrangements for and the Manufacturers are executing and delivering an Agreement and Assignment dated as of the date hereof (hereinafter called the "Assignment") among the Manufacturers and The Chase Manhattan Bank (National Association), as agent and assignee (hereinafter called the "Agent"), pursuant to which the Manufacturers are assigning certain of their respective rights and interests hereunder. The Railroad expressly acknowledges and agrees with the Agent and its successors and assigns, for the purpose of inducing the execution and delivery of the Assignment by the Agent and its advance to the Manufacturers in consideration therefor of an amount equal to the aggregate Purchase Price of the Equipment, that the rights of the Agent and its successors

and assigns to the entire unpaid balance of the aggregate amount of the Conditional Sale Indebtedness, together with interest thereon, and all other payments as herein provided, or any part thereof as so assigned, as well as all other rights hereunder so assigned, shall not be subject to any defense, setoff, counterclaim or recoupment whatsoever, whether arising out of any breach of any obligation of any Manufacturer in respect of the Equipment or the manufacture, construction, delivery or warranty thereof or with respect to any indemnity herein contained or any interruption from whatsoever cause in the use, operation or possession of the Equipment or any part thereof, or any damage to or loss or destruction of the Equipment or any part thereof, or by reason of any other indebtedness or liability, howsoever and whenever arising, at any time owing to the Railroad by any Manufacturer or to any other person, firm or corporation or to any governmental authority, or for any cause whatsoever, it being the intent hereof that, except in the case of an intentionally wrongful act on the part of the Agent or its successors and assigns, the Railroad shall be unconditionally and absolutely obligated to pay the Agent the entire unpaid balance or the aggregate amount of the Conditional Sale Indebtedness, together with interest thereon, and all other payments as herein provided, all in the manner and upon the dates set forth in Section 3 hereof. Any and all such obligations, if any and howsoever arising, shall be and remain enforceable by the Railroad against and only against the Manufacturers. Nothing contained in this Section 14.4 is intended to expand the scope of the Manufacturers' warranties which are always subject to the DISCLAIMERS OF IMPLIED WARRANTIES and limitations of remedy set forth therein.

14.5. In the event of any such assignment, or successive assignment, by the Manufacturers of security titled to the Equipment and of the Manufacturers' rights hereunder with respect thereto, the Railroad will, whenever requested by such assignee, change the names and word or words to be marked on each side of each Item of Equipment so as to indicate the security title of such assignee to the Equipment with such names and word or words as shall be specified by such assignee, subject to the requirements of the laws of the jurisdictions in which the Equipment shall be operated relating to such names and word or words for use on equipment covered by conditional sale agreements with respect to railroad equipment. The cost of marking such names and word or words with respect to the Agent (or to any successor assignee of the Agent) shall be borne by the

Railroad. The cost of marking such names and word or words in connection with any subsequent assignment (other than to a successor agent or trustee of the Agent) will be borne by the subsequent assignee.

14.6. In the event of any such assignment prior to the completion of delivery of the Equipment, the Railroad will, in connection with settlement for the Group subsequent to such assignment, deliver to the assignee, at the time of delivery by the Railroad of notice fixing the Closing Date with respect to such Group, all documents required by the terms of such assignment to be delivered to the assignee in connection with such settlement, in such number of counterparts as may reasonably be requested, except for any opinion of counsel for the assignee.

14.7. If this Agreement shall have been assigned by any of the Manufacturers or all of the Manufacturers (hereafter collectively called the "Assigning Manufacturers" and severally called an "Assigning Manufacturer"), and the assignee shall not, whether by reason of an insufficiency of funds or otherwise, make payment to an Assigning Manufacturer on the Closing Date with respect to any Item of Equipment manufactured by such Assigning Manufacturer and designated for settlement on such Closing Date of an amount equal to that portion of the Purchase Price of such Item of Equipment as provided in the instrument of assignment, such Assigning Manufacturer will promptly notify the Railroad of such event, such Item of Equipment shall be excluded from settlement on such Closing Date but fully preserving such Assigning Manufacturer's security title to such Item in a manner acceptable to such Assigning Manufacturer and the Railroad shall not later than 60 days after such Closing Date pay or cause to be paid to such Assigning Manufacturer the Purchase Price of all such Items of Equipment, or the portion thereof unpaid by the assignee, such payment to be in cash, together with interest for the period from and including the Closing Date on which settlement was to have been made to but not including the deferred date of payment of the Purchase Price under this Section 14.7 at a rate per annum equal to the Prime Rate, or, if such Assigning Manufacturer and the Railroad shall mutually agree, by means of a conditional sale agreement, equipment trust or other appropriate method of financing as the Railroad shall determine and as may be reasonably satisfactory to such Assigning Manufacturer.

SECTION 15. APPLICATION OF PROVISIONS OF SECTION 16,
"EVENTS OF DEFAULT", AND SECTION 17, "REMEDIES".

It is contemplated that each Manufacturer will assign certain of its rights under this Agreement, and all its respective right, security title and interest in and to the Equipment, to the Agent. It is desired by the parties hereto that the Agent should upon such assignment be entitled to enforce all of the assigned rights, powers, privileges and remedies of the respective Manufacturers under this Agreement, including but not limited to the enforcement of any remedies in case of an Event of Default under this Agreement. Accordingly, on the assumption that such assignments to the Agent will be made by each Manufacturer, the Events of Default and the remedies therefor as set forth in Sections 16 and 17 hereof are set forth as if there were but a single Manufacturer.

SECTION 16. EVENTS OF DEFAULT.

16.1 In the event that any one or more of the following events of default ("Events of Default") shall occur and be continuing, to-wit:

(a) The Railroad shall fail to pay in full any sum payable by the Railroad when payment thereof shall be due under Section 3 or 6 hereof and such default shall continue for ten days; or

(b) The Railroad shall fail or refuse to comply with any covenant, agreement, term or provision of this Agreement on its part to be kept and performed or to make provision satisfactory to the Manufacturer for such compliance for more than 30 days after written notice from the Manufacturer specifying the default and demanding the same to be remedied; or

(c) Any representation or warranty made by the Railroad herein or in any statement or certificate furnished to the Manufacturer or any assignee of the Manufacturer pursuant to or in connection with this Agreement proves untrue in any material respect as of the date of issuance or making thereof; or

(d) A case shall be commenced under subchapter IV of chapter 11 of Public Law 95-598, 11 U.S.C. 1161 et seq. (as said Law may be amended from time to time) by

or against the Railroad and (unless such case shall within 30 days from the commencement thereof be dismissed, nullified, stayed or otherwise rendered ineffective, but then only so long as such stay shall continue in force or such ineffectiveness shall continue) either (i) the trustee or trustees in such proceeding, with the approval of the court having jurisdiction, shall not have agreed in writing, within the period specified in section 1168(a)(1) of said Law, to perform all obligations of the Railroad under this Agreement and with the court's approval confirmed that such obligations shall have the same status as obligations incurred by such trustee or trustees or (ii) any Event of Default (other than under this paragraph (d)) occurring prior to or at any time after the commencement of such case shall not have been duly cured within the respective period specified in section 1168(a)(2) of said Law; or

(e) Any other proceedings shall be commenced by or against the Railroad for any relief under any bankruptcy or insolvency laws, or laws relating to the relief of debtors, readjustments of indebtedness, reorganizations, arrangements, compositions or extensions (other than a law which does not permit any readjustment of the indebtedness payable hereunder) and (unless such proceedings shall have been dismissed, nullified, stayed or otherwise rendered ineffective but then only so long as such stay shall continue in force or such ineffectiveness shall continue) all the obligations of the Railroad under this Agreement shall not have been duly assumed in writing, pursuant to a court order or decree, by trustee or trustees or receiver or receivers appointed for the Railroad or for the property of the Railroad in connection with any such proceedings in such manner that such obligations shall have the same status as obligations incurred by such trustee or trustees or receiver or receivers, within 30 days after such appointment or 60 days after such proceedings shall have been commenced, whichever shall be earlier; or

(f) The Railroad shall make or suffer any unauthorized assignment or transfer of this Agreement or any interest herein or any unauthorized transfer of the right or possession of any Item of Equipment; or

(g) Any Event of Default as defined in the Other Agreement shall occur and be continuing;

then at any time after the occurrence and during the continuance of such an Event of Default the Manufacturer may, upon written notice to the Railroad and upon compliance with any legal requirements then in force and applicable to such action by the Manufacturer, declare the entire indebtedness in respect of the Purchase Price of the Equipment (including, without limitation, the entire unpaid balance of the aggregate amount of the Conditional Sale Indebtedness), together with the interest thereon then accrued and unpaid, and all other amounts payable by the Railroad under this Agreement, immediately due and payable, without further demand, and the Manufacturer shall thereupon be entitled to recover judgment for the entire unpaid balance of the indebtedness in respect of the Purchase Price of the Equipment so payable, with interest as aforesaid, and to collect such judgment out of any property of the Railroad wherever situated.

16.2. The Manufacturer may waive any such Event of Default and its consequences and rescind and annul any such declaration by notice to the Railroad in writing to that effect. Upon any such waiver the respective rights of the parties shall be as they would have been if no such Event of Default had existed and no such declaration had been made. Notwithstanding the provisions of this paragraph, it is expressly understood and agreed by the Railroad that time is of the essence of this Agreement and that no such waiver, rescission or annulment shall extend to or affect any other or subsequent default or impair any rights or remedies consequent thereon.

SECTION 17. REMEDIES.

17.1. If an Event of Default shall have occurred and be continuing as hereinbefore provided, then at any time after the entire indebtedness in respect of the Purchase Price of the Equipment shall have been declared immediately due and payable as hereinbefore provided and during the continuance of such default, the Manufacturer may, upon such further notice, if any, as may be required for compliance with any mandatory requirements of law then in force and applicable to the action to be taken by the Manufacturer, take or cause to be taken by its agent or agents immediate possession of the Equipment, or any Item thereof, without liability to return to the Railroad any sums theretofore paid and free from all claims whatsoever, except as hereinafter in this Section 17 expressly provided, and may

remove the same from possession and use of the Railroad and for such purpose may enter upon the premises of the Railroad or where the Equipment may be located and may use and employ in connection with such removal any supplies, services and aids and any available trackage and other facilities or means of the Railroad, with or without process of law.

17.2. In case the Manufacturer shall rightfully demand possession of the Equipment in pursuance of this Agreement and shall reasonably designate a point or points upon the lines of the Railroad for the delivery of the Equipment to the Manufacturer, the Railroad shall, at its own expense, forthwith and in the usual manner, cause the Equipment to be moved to such point or points as shall be reasonably designated by the Manufacturer and shall there deliver the Equipment or cause it to be delivered to the Manufacturer; and, at the option of the Manufacturer, the Manufacturer may keep the Equipment on any of the railroad lines or premises of the Railroad until the Manufacturer shall have leased, sold or otherwise disposed of the same, and for such purpose the Railroad agrees to furnish, without charge for rent or storage, the necessary facilities at any point or points selected by the Manufacturer reasonably convenient. The agreement to deliver the Equipment as hereinbefore provided is of the essence of this Agreement between the parties, and, upon application to any court of equity having jurisdiction in the premises, the Manufacturer shall be entitled to a decree against the Railroad requiring specific performance hereof. The Railroad hereby expressly waives any and all claims against the Manufacturer and its agent or agents for damages of whatever nature in connection with any retaking of any Item of Equipment in any reasonable manner.

17.3. If an Event of Default shall have occurred and be continuing as hereinbefore provided, then at any time thereafter during the continuance of such Event of Default and after the entire indebtedness in respect of the Purchase Price of the Equipment shall have been declared immediately due and payable as hereinbefore provided (unless such declaration has been rescinded and annulled as provided in Section 16.2 hereof), the Manufacturer (after retaking possession of the Equipment as hereinbefore in this Section 17 provided) may at its election and upon such notice as is hereinafter set forth retain the Equipment in satisfaction of the entire unpaid indebtedness in respect of the Purchase Price thereof, together with interest thereon and all other payments due hereunder, and make such disposition thereof as

the Manufacturer shall deem fit. Written notice of the Manufacturer's election to retain the Equipment shall be given to the Railroad by telegram or registered mail, addressed as provided in Section 21 hereof, and to any other persons to whom the law may require notice, within 30 days after the indebtedness in respect of the Purchase Price of the Equipment shall have been declared immediately due and payable by the Manufacturer as above provided. In the event that the Manufacturer should elect to retain the Equipment and no objection is made thereto within the 30-day period described in the second proviso below, all of the Railroad's rights in the Equipment shall thereupon terminate and all payments made by the Railroad may be retained by the Manufacturer as compensation for the use of the Equipment; provided, however, that if the Railroad, before the expiration of the 30-day period described in the proviso below, should pay or cause to be paid to the Manufacturer the total unpaid balance of the indebtedness in respect of the Purchase Price of the Equipment (including, without limitation, the entire unpaid balance of the aggregate amount of the Conditional Sale Indebtedness), together with interest thereon accrued and unpaid and all other payments due under this Agreement, then in such event absolute right to the possession of title to any property in the Equipment shall pass to and vest in the Railroad; provided, further, that if the Railroad or any other persons notified under the terms of this Section 17.3 object in writing to the Manufacturer within 30 days from the receipt of notice of the Manufacturer's election to retain the Equipment, then the Manufacturer may not so retain the Equipment, but shall sell, lease or otherwise dispose of it or continue to hold the Equipment pending sale, lease or other disposition as hereinafter provided or as may otherwise be permitted by law. If the Manufacturer shall not have given notice to retain as hereinabove provided or notice of intention to dispose of the Equipment in any other manner, it shall be deemed to have elected to sell the Equipment in accordance with the provisions of this Section 17.

17.4. Any sale hereunder may be held or conducted at such place or places and at such time or times as the Manufacturer may specify, in one lot and as an entirety, or in separate lots and without the necessity of gathering at the place of sale the property to be sold, and in general in such manner as the Manufacturer may determine, provided that the Railroad shall be given written notice of such sale not less than 30 days prior thereto, by mail addressed as provided herein. If such sale shall be a private sale, it

shall be subject to the rights of the Railroad to purchase or provide a purchaser, within 30 days after notice of the proposed sale price, at the same price offered in writing by the intending purchaser or a better price. In the event that the Railroad does not exercise said right to purchase or provide a purchaser for the Equipment, the Manufacturer may bid for and become the purchaser of the Equipment, or any Item thereof, so offered for sale without accountability to the Railroad (except to the extent of surplus money received as hereinafter provided in this Section 17), and in payment of the Purchase Price therefor the Manufacturer shall be entitled to have credited on account thereof all sums due to the Manufacturer from the Railroad hereunder.

17.5. Each and every power and remedy hereby specifically given to the Manufacturer shall be in addition to every other power and remedy hereby specifically given or now or hereafter existing at law or in equity, and each and every power and remedy may be exercised from time to time and simultaneously and as often and in such order as may be deemed expedient by the Manufacturer. All such powers and remedies shall be cumulative, and the exercise of one shall not be deemed a waiver of the right to exercise any other or others. No delay or omission of the Manufacturer in the exercise of any such power or remedy and no renewal or extension of any payments due hereunder shall impair any such power or remedy or shall be construed to be a waiver of any default or an acquiescence therein.

17.6. All sums of money realized by the Manufacturer under the remedies herein provided shall be applied, first to the payment of the expenses and liabilities of the Manufacturer herein undertaken to be paid, second to the payment of interest on the indebtedness in respect of the Purchase Price of the Equipment (including, without limitation, the Conditional Sale Indebtedness), third to the payment, ratably in accordance with the unpaid balance of each installment, of the installments of indebtedness in respect of the Purchase Price of the Equipment (including, without limitation, the Conditional Sale Indebtedness) accrued and unpaid, and fourth to any unpaid commitment fee due hereunder. If, after applying as aforesaid all sums of money realized by the Manufacturer, there shall remain any amount due to it under the provisions of this Agreement, the Manufacturer may bring suit therefor and shall be entitled to recover a judgment therefor against the Railroad. If, after applying as aforesaid all sums realized by the Manufacturer, there

shall remain a surplus in the possession of the Manufacturer, such surplus shall be paid without interest to the Railroad.

17.7. The Railroad will pay all reasonable expenses, including attorneys' fees, incurred by the Manufacturer in enforcing its remedies under the terms of this Agreement. In the event that the Manufacturer shall bring any suit to enforce any of its rights hereunder and shall be entitled to judgment, then in such suit the Manufacturer may recover reasonable expenses, including attorneys' fees and the amount thereof shall be included in such judgment.

17.8. The foregoing provisions of this Section are subject in all respects to all mandatory requirements of law at the time in force and applicable thereto.

SECTION 18. APPLICABLE STATE LAWS.

18.1. Any provision of this Agreement prohibited by any applicable law of any state, or which by any applicable law of any state would convert this Agreement into any instrument other than an agreement of conditional sale, shall not modify the remaining provisions of this Agreement. Where, however, the conflicting provisions of any applicable state law may be waived, they are hereby waived by the Railroad to the full extent permitted by law, to the end that this Agreement shall be deemed to be a conditional sale agreement and enforced as such.

18.2. Except as otherwise provided in this Agreement, the Railroad, to the full extent permitted by law, hereby waives all statutory or other legal requirements for any notice of any kind, notice of intention to take possession of or to sell the Equipment, or any Item thereof, and any other requirements as to the time, place and terms of sale thereof, and other requirements with respect to the enforcement of the Manufacturers' rights hereunder and any and all rights of redemption.

SECTION 19. EXTENSION NOT A WAIVER.

No delay or omission in the exercise of any power or remedy herein provided or otherwise available to the Manufacturers shall impair or affect the Manufacturers'

right thereafter to exercise the same. Any extension of time for payment hereunder or other indulgence duly granted to the Railroad shall not otherwise alter or affect the Manufacturers' rights or the obligations of the Railroad hereunder. The Manufacturers' acceptance of any payment after it shall have become due hereunder shall not be deemed to alter or affect the Railroad's obligations or the Manufacturers' rights hereunder with respect to any subsequent payments or Events of Default.

SECTION 20. RECORDING.

The Railroad at its expense will cause this Agreement, any assignment hereof and any supplements hereto and thereto to be filed, recorded or deposited and re-filed, re-recorded or re-deposited, if necessary, with the Interstate Commerce Commission and the Registrar General of Canada (with notice of such deposit to be published in The Canada Gazette in accordance with Section 86 of the Railway Act of Canada), and otherwise as may be required by law or reasonably requested by the Manufacturers (including, without limitation, in accordance with the laws of Mexico) for the purpose of proper protection, to the satisfaction of counsel for the Manufacturers, of their security title to the Equipment and their rights under this Agreement or for the purpose of carrying out the intention of this Agreement; and the Railroad will promptly furnish to the Manufacturers certificates or other evidences of such filing, recording or depositing, and an opinion or opinions of counsel for the Railroad with respect thereto, satisfactory to the Manufacturers.

SECTION 21. NOTICE.

Any notice hereunder to any of the parties designated below shall be deemed to be properly served if delivered or mailed to it at the following specified addresses:

(a) to the Railroad:

Burlington Northern Inc.
 Burlington Northern Building
 176 East Fifth Street
 St. Paul, MN 55101
 Attention: Vice President and Treasurer

(b) to FMC:

FMC Corporation
 4700 Northwest Front Ave.
 Box 3616
 Portland, OR 97208
 Attention: Mr. William Galbraith

(c) to General Electric:

General Electric Company
 2901 East Lake Road,
 Bldg. 14-4
 Erie, PA 16531
 Attention: Manager, Financing and
 Sales Accounting

(d) to DIFCO:

Difco, Inc.
 1501 North Main Street
 Findlay, OH 45850
 Attention: Mr. Fred Flowers

or at such other address as may have been furnished in writing by such party to the other parties to this Agreement.

SECTION 22. HEADINGS

All section headings are inserted for convenience only and shall not affect the construction or interpretation of this Agreement.

SECTION 23. EFFECT AND MODIFICATION OF AGREEMENTS.

Except as provided in Section 3.1 hereof, this Agreement and the Schedules relating hereto exclusively and completely state the rights and agreements of the

Manufacturers and the Railroad with respect to the Equipment and supersede all other agreements, oral or written, with respect to the Equipment. No variation of this Agreement and no waiver of any of its provisions or conditions shall be valid unless in writing and duly executed on behalf of the Manufacturers and the Railroad.

SECTION 24. LAW GOVERNING.

The terms of this Agreement and all rights and obligations hereunder shall be governed by the laws of the State of New York; provided, however, that the parties shall be entitled to all rights conferred by applicable federal law and such additional rights arising out of the filing, recording or depositing hereof and of any assignment hereof as shall be conferred by the laws of the several jurisdictions in which this Agreement or any assignment hereof shall be filed, recorded or deposited.

SECTION 25. DEFINITIONS.

The term "Manufacturers", whenever used in this Agreement, means, before any assignment of any of their rights hereunder, FMC, General Electric, and DIFCO and any successor or successors for the time being to the properties and business of each, respectively, and, after any such assignment, any assignee or assignees for the time being of such particular assigned rights as regards such rights, and also any assignor as regards any rights hereunder that are retained and excluded from any assignment. The rights and undertakings of each Manufacturer and the rights and obligations of the Railroad with respect to each Manufacturer hereunder are several and not joint.

SECTION 26. PAYMENT OF EXPENSES.

The Railroad will pay all stamp or other taxes and all reasonable costs and expenses incident to this Agreement, the Assignment, and the first assignment of this Agreement, and any instrument supplemental or related thereto, including but not limited to all fees and expenses of the first assignee of this Agreement and of counsel for the first assignee of this Agreement and for any party acquiring interests in such first assignment, and all reasonable costs and expenses in connection with the

transfer by any party of interests acquired in such first assignment. For the purposes of this Section 26, if the first assignee is the Agent, then any successor agent to the Agent shall also be considered the first assignee.

SECTION 27. CONSOLIDATION OR MERGER.

In case of any consolidation or merger to which the Railroad or any Manufacturer shall be a party, or in case of any sale of all or substantially all of the assets of the Railroad or any Manufacturer, the corporation resulting from such consolidation or merger (if other than the Railroad or such Manufacturer), or the corporation which shall acquire such assets, shall expressly assume all obligations hereunder not then performed by the Railroad or such Manufacturer, as the case may be, and shall become entitled to all rights hereunder of the Railroad or such Manufacturer, as the case may be.

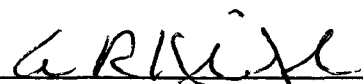
SECTION 28. EXECUTION.

This Agreement may be executed in any number of counterparts, all of which together shall constitute a single instrument. It shall not be necessary that any counterpart be signed by all of the parties so long as at least one counterpart is signed by each party hereto. Although this Agreement is dated for convenience as of the date first above written, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed in their respective corporate names by their officers or representatives, thereunto duly authorized, and their respective corporate seals to be hereunto affixed, duly attested, all as of the date first above written.

[Corporate Seal]

Attest:

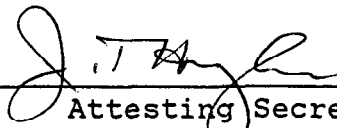

Assistant Secretary

FMC CORPORATION

By 
Vice President

[Corporate Seal]

Attest:



Attesting Secretary

GENERAL ELECTRIC COMPANY

By  _____
Title:

MANAGER-MARKETING
LOCOMOTIVE MARKETING DEPARTMENT

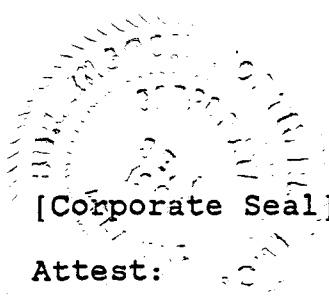
[Corporate Seal]

Attest:

Mary Schindler
Assistant Secretary

DIFCO, INC.

By Fred F. Flowers
Vice President



[Corporate Seal]

Attest:

By *G. F. Schindler*
Assistant Secretary

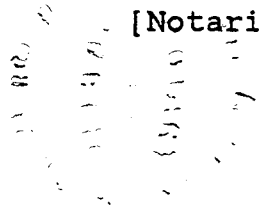
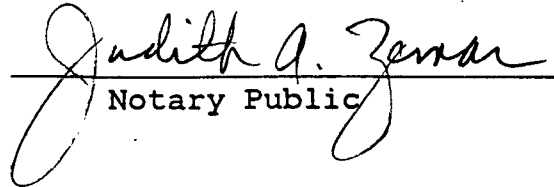
BURLINGTON NORTHERN INC.

By *Frank H. Coyne*
Executive Vice President-
Finance and Administration

STATE OF ILLINOIS)
 :SS.:
COUNTY OF COOK)

On this 16th day of November, 1979, before me personally appeared B. R. van Eck to me personally known, who, being by me duly sworn, says that he is a Vice President of FMC CORPORATION, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

[Notarial Seal]



Notary Public

COMMONWEALTH OF PENNSYLVANIA)

: ss.:

COUNTY OF ERIE)

On this 19th day of November, 1979, before me personally appeared *R.D. Morey*, to me personally known, who, being by me duly sworn, says that he is a *Manager-Marketing, Locomotive Marketing Department* of GENERAL ELECTRIC COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

(Seal)

/s/ *Doris W. Chilcott*
Notary Public

DORIS W. CHILCOTT, NOTARY PUBLIC
LAWRENCE PARK TWP., ERIE CO., PA.
MY COMMISSION EXPIRES NOV. 26, 1979

STATE OF OHIO)

: ss.:

COUNTY OF HANCOCK)

On this 16th day of November, 1979, before me personally appeared Fred F. Flouey to me personally known, who, being by me duly sworn, says that he is a President of DIFCO, INC., that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

(Seal)

1s/ North E. Buckland

Notary Public

9-9-82

STATE OF MINNESOTA)
 : ss:
 COUNTY OF RAMSEY)

On this *15th* day of November, 1979, before me personally appeared Frank H. Coyne, to me personally known, who, being by me duly sworn, says that he is the Executive Vice President-Finance and Administration of BURLINGTON NORTHERN INC., that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

(Seal)

/s/ *J. H. McCarthy*
 Notary Public

